In my view this argument for the appellants also fails. To begin with, the word used in the definition is not 'responsibility' but 'responsible'. For another, let me say that the case of *Midland Bank Ltd* v *Conway Corp*[1] has no relevance to the present case. That was a case which concerned the relationship of banker and customer. In the present case, there is no special relationship between the appellants and the employee, Wee. The relationship created by the definition of 'employer' in the Act was between the appellants and the employer, Angko, and not between the appellants and the employee, Wee, for the definition states that an employer is a person who is responsible to pay the wages of an employee for an employer.

On the facts, Rimaco had made itself responsible, for whatever reasons, to pay the wages for Angko. If for some reasons Rimaco does not pay for Angko, the dispute that would arise would be between the two of them and it would have nothing to do with the employee of Angko. If Wee turns up at Rimaco's office in Singapore and asks for the wages owing to him by Angko, Rimaco could well say, 'Yes, I had agreed to pay on behalf of Angko but for reasons which do not concern you I am not going to pay your wages now for Angko. You must look to Angko for your wages.' Can it be said that Wee has right of redress against Rimaco? I think not.

So, even if the word 'responsible' is to have some meaning other than its ordinary meaning, it follows from what I have said that there is no legal relationship between the appellants and Wee. But, I am of the view that 'responsible' must be given its ordinary and natural meaning. It is a word that can have several meanings depending on the context in which it is used. In the definition of 'employer' I understand the word to mean as 'answerable' or 'accountable'. It is a question of fact for decision, and that would depend on the facts of the particular case. That is why I have referred to the evidence to show that as a matter of fact Rimaco had undertaken to be responsible for the wages of certain employees of Angko, including that of Wee. Indeed, the evidence is, throughout the time that Wee had worked for Angko, Rimaco had on behalf of Angko paid the wages of Wee.

For these reasons, on the issue raised at the hearing, I must decide against the appellants and the appeal is accordingly dismissed.

Appeal dismissed.

Solicitors: *Ganesan Carlose & Partners.*

Reported by *Kevin Mathews*

Goh Jong Cheng v MB Melwani Pte Ltd

HIGH COURT (SINGAPORE) — SUIT NO 1558 OF 1982
CHAO HICK TIN JC
12 OCTOBER 1990

Land Law — Equitable mortgage — Deposit of title deeds — Whether registered proprietor of property knowingly handed title deeds to son to enable him to use it as security by way of mortgage to the defendant — Non est factum — Whether applicable to vitiate alleged creation of equitable mortgage by deposit of title deeds

The plaintiff was the registered proprietor of a piece of property (the 'property'). The defendant had extended credit facilities to a company (the 'company') of which the plaintiff's son was a director. The plaintiff had handed the title deeds of the property to her son and had later been accompanied by her son to the solicitor's office whereby she signed two sets of a mortgage deed mortgaging the property to the defendant. The same solicitor acted for the plaintiff and the defendant in the transaction, and the plaintiff's son acted as an interpreter between the solicitor and the plaintiff. The plaintiff's son subsequently requested a return of the mortgage deed from the solicitor, and the deeds were returned to the plaintiff. The solicitor later lodged a caveat in the registry against the property in respect of the defendant's interest.

The plaintiff sought a declaration that no equitable mortgage had been created by the deposit of the title deeds and that the caveat lodged by the defendant against the property be cancelled. The issue before the court was whether the plaintiff did knowingly hand the title deeds of the property to her son and whether the doctrine of 'non est factum' applied.

Held, allowing the plaintiff's application:

(1) There are two factors which must be present before a party may successfully plead non est factum:

(i) The documents signed must be significantly different from that which the signer believed them to be.

(ii) The signer must not be negligent when he signed the document.

(2) The plaintiff successfully pleaded non est factum as:

(i) The plaintiff did not know when she handed the title deeds to her son that they were to be used as security for credit facilities to be granted by the defendant to the company.

(ii) Although the solicitor may have explained the general nature of the deed to the plaintiff, the solicitor did not explain the mortgage deed sentence by sentence to the plaintiff in Hokkien.

(3) (Obiter) Extra care on the part of solicitors was required in dealings with elderly or illiterate persons, particularly when such persons are assuming responsibilities or liabilities of others. It was vitally important to ensure that such a person fully understood what he was about to do and that there was no undue influence or deception. Only a disinterested person should be asked to be an interpreter. And when a solicitor was acting for all parties on a transaction he must be conscious of a conflict situation arising and should not hesitate whenever there was a reasonable doubt to ask the person to seek independent legal advice.

Cases referred to

1 *Thoroughgood's Case* (1584) 2 Co Rep 9a; 76 ER 408 (folld)

2 *Saunders* v *Anglia Building Society* [1971] AC 1004 (folld)

Cheng Tim Pin (*Lo Wai Ping (Ms)* with him) for the plaintiff.

Joseph Hoo for the defendant.

Cur Adv Vult

Chao Hick Tin JC: In this action the plaintiff, who is the registered proprietor of the property known as No 18, Jalan Chempah, Singapore 2057 ('the property'), claims for a declaration that no equitable mortgage was created on 16 September 1981 by the plaintiff in favour of the defendant in respect of the property. The plaintiff also prays that the caveat No CD/56614 lodged by the defendant on 2 November 1981, be removed and cancelled.

The question which this court has to determine in this action is whether in the circumstances the doctrine of non est factum applies. This in turn depends on whether the plaintiff did knowingly, on 16 September 1981, hand the title deeds of the property to her son, one Cheng Yew Jing, to enable him to use it as a security by way of a mortgage to the defendant so that the defendant would grant credit facilities to a company by the name of PT Bukit Timah (Pte) Ltd (hereinafter called 'PT') where the son was not a shareholder but was only made a director on 6 October 1981.

Plaintiff's case

Let me first set out the evidence of the parties. The plaintiff was at the material time in September 1981 working as a cleaner with Raffles Hotel. She is now also a cleaner but working with a factory at Ang Mo Kio. She is illiterate and could only speak the Hainanese dialect. She was then 54 years old; now 63. She was living with the son, Cheng Yew Jing, who was then still serving his national service. The son had completed 'A' level but did not do well and was attending night classes. The property was bought for her in 1965 by her late husband, who passed away in 1967.

According to the plaintiff, sometime in mid-September 1981 she handed the title deeds of the property to her son at his request to enable him to verify whether the title deeds were correct. She did not suspect anything. In mid-October 1981 she was taken by her son to a solicitor's office to sign a document so that she could get back the title deeds. At the solicitor's office no one explained to her the contents of the documents she was required to sign. After she had signed she enquired why she was not given her title deeds and was told by her son that she had to wait. She was asked to go home. On the evening of the same day when the son returned home the plaintiff asked him again why he had not taken back her title deeds. It was at that point that the son told her for the first time that he wanted to use the property for the purpose of a mortgage. The plaintiff disagreed and she asked her son to get the title deeds back. She did not know the name of the law firm at which she went to sign the documents and she did not know how to go there. It was sometime in November 1981 that the son returned two documents to her. The two documents were the mortgage deed which she signed (P1 and P2: being the original and the duplicate copies). As she could not understand what was written on the documents, she showed them to her married daughter (not living with the plaintiff) who advised her to see a lawyer. On the recommendation of another person she consulted M/s Yap & Yap. The plaintiff stated categorically that she did not at any time give a power of attorney to her son to deal with the property. During that period no one wrote any letter to her with regard to her property. On 14 November 1981 M/s Yap & Yap wrote on her behalf to the defendant's solicitors requesting for the return of the title deeds.

In cross-examination the plaintiff said that at the office of the law firm she was asked by a lady for her name, address and identity card. The plaintiff was then requested to sign. She did not communicate directly with the lady but spoke through her son. She said she signed thinking that by so doing she would be getting back her title deeds as that was what the son told her. She did not enquire about the documents she was about to sign; she asked no questions. The lady did not explain the documents to her. The lady was talking to her son in English. She denied that she gave her title deeds to her son for the purpose of creating a security over the property for the son's business. She denied that after giving the title deeds to her son to create a security she subsequently changed her mind. The plaintiff admitted that she did not ask her son where he was taking the title deeds for verification. Between mid-September and mid-October 1981 she asked her son many times when he was going to get the title deeds back for her. His reply was that the lawyers were not free and the son asked her to wait. She did not suspect anything when she went to the lawyer's office to sign the documents.

When she was asked why she did not immediately obtain the return of the title deeds on the very next day after the son had told her of the purpose for which the title deeds were required, she answered that she did not know where the lawyer's office was. The son had to go for national service and she had to go to work, as she had not applied for leave. She waited for the son to get the title deeds back to her. It was only after the son gave the two documents (P1 and P2) to her that she took them to see her daughter.

Defendant's case

The defendant called one Mdm Wee Beng Choo (DW1) who was then a legal assistant with the law firm, M/s Advani Hoo Morris & Kumar, to testify as to the circumstances surrounding the execution by the plaintiff

of P1 and P2. Mdm Wee has now settled down in Israel. She was the solicitor who prepared P1 and P2.

According to Mdm Wee, on or about 16 September 1981, she was called by Mr Advani, the senior partner of the firm, to his office. She was introduced to three gentlemen present in the room. One was Mr KH Melwani, a director of the defendant's company; the second was Mr Cheng Yew Jing, the son of the plaintiff, and the third was one by the name of Yeo Siew Kiat. Mdm Wee was given to understand that the defendant company had agreed to supply goods on credit to PT up to a limit of $200,000 and in consideration thereof a legal mortgage of the property would be created to secure the credit facilities and that the plaintiff would be the guarantor. She was instructed to prepare the necessary documentation and that her firm was to act for all parties, the mortgagor, the mortgagee and the borrower. Having prepared P1 and P2, she arranged for the plaintiff and PT to execute the mortgage deed. Accordingly, on 8 October 1981, Cheng Yew Jing brought his mother, the plaintiff, to the office of M/s Advani Hoo Morris & Kumar; also present was the said Yeo Siew Kiat. After satisfying herself that the plaintiff was the person named in the title deeds, Mdm Wee asked the plaintiff if the latter understood Hokkien. The plaintiff said 'yes'. Thereafter, Mdm Wee proceeded to explain the nature, contents and implications of the document to her in Hokkien. The plaintiff was told that she was liable for the debts of PT and that the mortgage was to secure the credit facilities granted by the defendant to PT. Mdm Wee said that the entire document was explained to her in Hokkien, sentence by sentence. Having so explained to the plaintiff, Mdm Wee again explained the document in English to her son, who then interpreted it in Hainanese to his mother. She did so to ensure that the plaintiff understood the document. Having been so satisfied, Mdm Wee asked the plaintiff to sign P1 and P2.

According to Mdm Wee, PT was supposed to execute the mortgage deed the very same day but Cheng Yew Jing had forgotten to bring the seal of PT. Thus no execution by PT took place that day. Arrangements were then made for the directors of PT to call at the office to execute the documents at a later date. However, on or about 10 October 1981, Cheng Yew Jing called at Mdm Wee's office and informed her that he would take the mortgage documents to Kuala Lumpur for execution by PT as the directors were not in Singapore. Pursuant to this request she handed P1 and P2 to Cheng Yew Jing. These two documents were never returned to Mdm Wee. Subsequently she tried to contact Cheng Yew Jing but without success. Accordingly, on 2 November 1981 she lodged a caveat at the Land Titles Registry (after three previous unsuccessful attempts) against the property.

Under cross-examination Mdm Wee admitted that between 16 September 1981 and 14 November 1981 her firm did not write any letter to the plaintiff. She also admitted that at no time did she suggest to the plaintiff that the latter should seek independent legal advice. She was not aware whether PT would give an indemnity to the plaintiff for the guarantee. She did not know of any arrangement between the plaintiff and PT. She lodged the caveat to protect the security that was granted to the defendant as she had by then been informed that the defendant had extended credit facilities to PT. The caveat lodged by Mdm Wee on behalf of the defendant was on the basis that an equitable mortgage was created by the deposit of the title deeds on 16 September 1981. She conceded that the defendant never instructed her to create an equitable mortgage; neither did the plaintiff nor PT instruct her to do so. However, she explained that in the circumstances, by the delivery of the title deeds as security, the defendant is entitled to claim interest as equitable mortgagee.

The second witness for the defendant was Mr Melwani (DW2). He said that he was introduced to the son of the plaintiff by Yeo. Mr Melwani could not now recall the full name of Yeo with whom Mr Melwani, before then, had business dealings for two to three months. One day, Yeo came to see Mr Melwani and told the latter that Yeo had a friend who wanted to do business with Mr Melwani. This friend wanted a credit line. Mr Melwani told Yeo that he would only give credit line if that person furnished security. Subsequently Yeo informed Mr Melwani that the friend was prepared to give a guarantee. Accordingly, arrangement was made for the necessary documentation to be prepared by Mr Melwani's lawyer, Mr Advani. On an appointed date, Yeo came with a person by the name of Cheng (the son of the plaintiff) to pick up Mr Melwani to go to the law firm of M/s Advani Hoo Morris & Kumar.

Mr Melwani admitted that prior to this date he had never met Cheng. Cheng showed to Melwani the title deeds relating to his mother's house which would be used as security. The documents were then handed to Mr Advani for the necessary documentation to be drawn up. According to Mr Melwani, Cheng told him that he had authority from his mother to release title deeds as security. Cheng also said that his mother would come and execute the documentation when it was ready. While the three of them were at Mr Advani's office, Mdm Wee was called in by Mr Advani to prepare the necessary documentation.

Mr Melwani said that thereafter Cheng constantly kept telephoning him to find out when he could have the credit line. Because of that Mr Melwani had also rang up his lawyer to enquire when the documentation would be ready. On 8 October 1981, Mr Melwani was told by his lawyer that the documents were signed. Credit was as a result extended by the defendant to PT. In payment for the goods sold on credit, Cheng gave cheques payable on a Kuala Lumpur bank which were subsequently dishonoured. Mr Melwani was made to

understand that PT had facilities with the Kuala Lumpur bank. He stressed that he would never have sold the goods on credit to PT if there was no security.

Mr Melwani admitted that though Cheng looked young, he did not think Cheng was under 21. He agreed that on 16 September 1981 Cheng was not a director of PT which had a paid-up capital of only $4. Cheng was never a shareholder. Mr Melwani had no personal knowledge of the relationship between Cheng and the plaintiff. He relied entirely on the word of Cheng. Throughout the transaction Mr Melwani had never spoken to the plaintiff. When Mr Melwani was asked if he could think of a reason why the plaintiff would mortgage her property as security for the credit limit of PT, a company in which her son was not a shareholder, he did not offer an answer.

Mr Melwani was under the impression that a mortgage deed, as well as a guarantee, would be prepared. However, he never saw any guarantee. Throughout the entire period he had never asked his solicitors to ascertain whether the plaintiff had in fact given authority to Cheng to hand the title deeds over as security for the credit facilities to be granted by the defendant to PT. However, Mr Melwani explained that as Cheng said that he had that authority, he did not question Cheng's word.

Law

I will at this juncture briefly touch on the law governing the plea of non est factum. This plea would appear to have existed as early as 1584 and the case in question was *Thoroughgood's Case*.[1] The general rule is that a party of full age and understanding is normally bound by his signature to a document. If, however, a party has been misled into signing a document essentially different from that which he intended to sign, he can plead non est factum in an action against him. The document is completely void in whosoever's hands it may come: see para 363 of *Chitty on Contracts* (26th Ed).

The law on this subject was recently reviewed in the leading case *Saunders* v *Anglia Building Society*,[2] a decision of the House of Lords. All I propose to do is to cite a few passages from the case. Lord Wilberforce stated the principle thus at p 1026:

> How, then, ought the principle, on which a plea of non est factum is admissible, to be stated? In my opinion, a document should be held to be void (as opposed to voidable) only when the element of consent to it is totally lacking, that is, more concretely, when the transaction which the document purports to effect is essentially different in substance or in kind from the transaction intended. Many other expressions, or adjectives, could be used — 'basically' or 'radically' or 'fundamentally'. In substance, the test does not differ from that which was applied in the leading cases of *Thoroughgood* (1582) 2 Co Rep 9b and *Foster* v *Mackinnon* (1869) LR 4 CP 704, except in moving from the character/contents distinction to an area in better understood modern practice.

Expressing very much the same opinion was Viscount Dilhorne who said at p 1021:

> What are the matters which have to be established for the plea to succeed? First, in my opinion, it must be shown that the document signed was radically different in character from that which the signer thought it was. In *Foster* v *Mackinnon* (1869) LR 4 CP 704 the defendant had been deceived into indorsing a bill when he believed it to be a guarantee. Byles J, delivering the judgment of the court, said, at p 711:
>
> > 'It seems plain, on principle and on authority, that, if a blind man, or a man who cannot read, or who for some reason (not implying negligence) forbears to read, has a written contract falsely read over to him, the reader misreading to such a degree that the written contract is of a nature altogether different from the contract pretended to be read from the paper which the blind or illiterate man afterwards signs; then, at least if there be no negligence, the signature so obtained is of no force. And it is invalid not merely on the ground that the mind of the signer did not accompany the signature; in other words, that he never intended to sign, and therefore in contemplation of law never did sign, the contract to which his name is appended.'
>
> It is to be observed that Byles J did not say that failure to read the contract by a person who could read was of itself negligence debarring him from repudiating his signature. He recognized that there might be cases where a person forbore to read without being negligent.

Finally I would refer to what Lord Pearson enunciated at p 1034:

> In my opinion, the plea of non est factum ought to be available in a proper case for the relief of a person who for permanent or temporary reasons (not limited to blindness or illiteracy) is not capable of both reading and sufficiently understanding the deed or other documents to be signed. By 'sufficiently understanding' I mean understanding at least to the point of detecting a fundamental difference between the actual document and the document as the signer had believed it to be. There must be a proper case for such relief. There would not be a proper case if (a) the signature of the document was brought about by negligence of the signer in failing to take precautions which he ought to have taken, or (b) the actual document was not fundamentally different from the document as the signer believed it to be.

From these speeches, one can see that two vital factors must be present before a party may successfully plead non est factum. First, the document which was signed must be significantly different from that which the signer believed it to be; and second, the signer must not be negligent when he signed the document. Negligence in this regard has no special technical meaning. To quote Lord Pearson at p 1037: 'it meant carelessness, and in each case it was a question of fact for the jury (in our case here, the court) to decide whether the person relying on the plea had been negligent or not.'

Findings of the court

As would be apparent, in the present case the two crucial but related issues of fact which this court has to

decide are (i) did the plaintiff hand the title deeds over to her son Cheng Jew Jing knowing that the property would be used as security for the debt of PT; and (ii) did Mdm Wee explain P1 and P2 to the plaintiff before she was asked to sign them. Both these issues really boil down to determining the knowledge of the plaintiff with regard to the transaction.

I would observe that this court does not have the benefit of hearing the son, Cheng Yew Jing — as to how he got involved with Yeo and others in the business venture in PT and why he (if what is alleged by the plaintiff is true) deceived his mother in making her part her title deeds to him. The plaintiff told this court that her son left Singapore in 1984. In the beginning he would telephone back occasionally. However, in the last two years she did not hear from him at all either on the telephone or in writing. She does not know where he is now. Earlier in one of the telephone conversations the son did give her an address. However, all communications sent by M/s Yap & Yap to the son at that address had been returned undelivered.

The plaintiff's evidence is that she was never told by the son that the title deeds would be used as security for the credit facilities to be granted by the defendant to PT. The only reason she handed the title deeds to the son was because the son wanted to verify the particulars therein. She did not query her son on that because she did not suspect anything. Counsel for the defendant submitted that it was most unlikely that the plaintiff would not query her son if the request, as claimed by the plaintiff, was made out of the blue.

It seems to me that in order to determine the knowledge which could reasonably be attributable to the plaintiff at the time of the handing over of the title deeds, and to determine whether the plaintiff is telling the truth, one must also closely examine the events of 8 October 1981 when she went to the office of M/s Advani Hoo Morris & Kumar to sign the mortgage deed.

According to Mdm Wee, she explained the mortgage deed sentence by sentence to the plaintiff in Hokkien. Mdm Wee then again explained the mortgage deed in English to the son who in turn spoke to the mother in Hainanese. The plaintiff said that she did not ask any questions of Mdm Wee regarding the documents she signed. This point was not challenged. Neither did Mdm Wee in her evidence say that the plaintiff asked her any questions on the deed.

Counsel for the plaintiff urged me to bear in mind that at the relevant time the son was still doing his national service and had no working or business experience; he was in fact attending night classes to improve himself. Counsel for the plaintiff then asked these questions: Would it be likely that, if the mother had known the true position and/or if the deed had been fully explained to her, she would sign the deed without even clarifying how her rights in the property would be affected, bearing in mind that it might affect the roof over her head? Wouldn't the mother be concerned to ask Mdm Wee about the risk factor? Wouldn't she be interested to enquire about the people involved in PT?

Having regard to the extensive terms set out in the mortgage deed, I find it most unlikely that if the deed were explained to the plaintiff, sentence by sentence, that she would not have some queries regarding some of the matters therein. I can't imagine a mother, no matter how loving and caring and trusting she is towards her son, but knowing that her son is completely without experience in business and that the arrangement could adversely affect her property, would in the circumstances be so nonchalant as to ask no questions. I would even go one step further and say this. Quite apart from the fact whether Mdm Wee did or did not explain the mortgage deed sentence by sentence to the plaintiff on 8 October 1981, I think it unlikely, if the son had in fact told the mother of the true reason for asking the title deeds, that the plaintiff knowing how completely a novice the son was in business, would not have asked some questions of Mdm Wee to safeguard her interests and perhaps those of her son.

There are several matters or circumstances which give me reasons to believe that the evidence of Mdm Wee may not be completely correct and that after a lapse of almost nine years, she has probably forgotten the event and is now trying to recall it in the most favourable light in so far as her role in it is concerned. First, Mdm Wee said that she explained the mortgage deed to the plaintiff sentence by sentence. If she did so explain, she would not have failed to observe that on the first page of P1 against the block 'Description of Land' no entry was made. I would have thought, one of the first things any reasonably prudent solicitor would have done would be to confirm the description of the property with the mortgagor, especially if that was their first encounter. That is fundamental.

Second, in cl 6(a) of P1 there is a reference to the preparation and execution of a deed of guarantee. Also in a letter dated 9 October 1981 (DB24) Mdm Wee wrote to the defendant company saying that 'the mortgage and the guarantee herein have been executed by the borrowers and the guarantors'. No deed of guarantee has been produced to this court. There is no evidence that the plaintiff executed any deed of guarantee. Mdm Wee tried to explain that the guarantee mentioned in DB24 had nothing to do with this matter. I can't accept that. The heading of the letter (DB24) clearly stated 'credit facilities up to limit of $200,000 to PT Bukit Timah (S) Pte Ltd'. Be that as it may, if P1 were explained sentence by sentence to the plaintiff,

Mdm Wee would have noticed the omission of the deed of guarantee.

Third, and this is related to the second point above, it is certainly not true, as stated in the letter of 9 October 1981 (DB24), that the borrower, had also executed the mortgage. P1 and P2 bear only the signature of the plaintiff. In fact Mdm Wee said in evidence that the borrowers could not execute P1 and P2 because Cheng Yew Jing forgot to bring the seal of the company. In this regard I would observe that Mr Melwani in his evidence said that he spoke to his lawyer on 8 October 1981 and was given clearance by his lawyer to extend credit facilities. But the puzzle is this: on that day PT had not yet executed the mortgage, so how could clearance be given?

Fourth, Mdm Wee told this court that in connection with the mortgage she was acting for both mortgagor and mortgagee. Yet when M/s Yap & Yap wrote on 2 March 1982 (DB53) enquiring if M/s Advani Hoo Morris & Kumar had at any time acted for the plaintiff in relation to the property, no reply appears to have been given in spite of a reminder sent on 12 March 1982 (DB54). Further, when Mdm Wee entered a caveat against the property on 2 November 1981 (after three previous attempts on 29, 30 and 31 October 1981 were rejected) she did not inform the plaintiff at all. As she was, on her own evidence, also acting for the plaintiff in the purported mortgage, she should have been more even handed in dealing with the two parties. The plaintiff only came to know of the caveat on 22 January 1982 after enquiries by M/s Yap & Yap.

Fifth, Mdm Wee said that on 10 October 1981 Cheng Yew Jing came to ask for P1 and P2 to take them for execution by the directors in Kuala Lumpur. But that appears hardly necessary as the search done earlier by the solicitors at the Registry of Companies (DB11) showed that two directors resided in Singapore (Yeo Siew Kiat and one Ang Choon Hua); only the third director, one Ng Hang Meng resided at Tanjong Pinang, Indonesia. Why did she swallow this pretext given by Cheng Yew Jing? Could it have been a lapse? In fact on 6 October 1981, Cheng Yew Jing was already a director. He, together with Yeo, could have executed the deed on behalf of PT. That was what was intended on 8 October 1981 but for the absence of the seal.

Sixth, there was a long lapse of time before M/s Advani Hoo Morris & Kumar replied (DB48) to the letter of 14 November 1981 from M/s Yap & Yap (DB36). The matters asked for could have been replied straight away. Why the delay?

Seventh, M/s Advani Hoo Morris & Kumar in their reply of 22 January 1982 (DB48) to M/s Yap & Yap said that 'Our clients, at the joint *request of your client* and PT Bukit Timah (S) Pte Ltd, agreed to supply from time to time, in credit, goods and products to the said PT . . . In pursuant of the said agreement, *your client, at the request of our clients, deposited* the title deeds of the above property with us to enable us to prepare the necessary mortgage documents . . . '. Even if one were to accept completely the evidence of Mr Melwani and Mdm Wee this statement is not really accurate. The plaintiff did not make any request. She had never spoken to or seen Mr Melwani.

Having considered all the evidence I am inclined to think that the conduct of the plaintiff was consistent with that of a person who did not know that her property was being put at risk. That was why she asked no question when she signed the mortgage deed. The retrieving of P1 and P2 by Cheng Yew Jing from Mdm Wee on 10 October 1981 was also consistent with what the plaintiff said, ie having only been told of the true position on the evening of 8 October 1981, she pestered her son to get the title deeds back. Perhaps a pang of conscience made Cheng decide to retrieve the documents which he had falsely led his mother to sign. In order to get the documents from Mdm Wee, he created the pretext of having to take the documents to Kuala Lumpur for the directors to sign. This explains why the documents were never returned to Mdm Wee; neither were they executed by PT.

The defendant says that this is a case of a change of heart. On this assertion it means this. The plaintiff handed the title deeds to the son willingly after she had been told truthfully for what purpose the title deeds would be used. From 16 September to 8 October 1981, a period of three weeks, she was quite contented to help her son. She went to the solicitors' office and signed the mortgage deed after it was fully explained to her, sentence by sentence. She was still determined to help her son so much so that she did not raise any query. Now the question is this: is it consistent with such conduct that within several hours after signing that she would change her mind. As I have stated, the son did, in fact, retrieve the mortgage deed on 10 October 1981. I am inclined to think not.

Having carefully considered the evidence, I find, on balance, that the plaintiff did not know when she handed the title deeds to her son that they were to be used as a security for credit facilities to be granted by the defendant to PT. The son had deceived his mother who had remained unsuspecting. Having regard to her background I think she could not really be expected to be worldly-wise. It is not unreasonable for a mother not to suspect that her son would harm or cheat her. While there is no evidence on this, I would be inclined to think that Cheng Yew Jing himself could have been cajoled by others into the business venture. They could have sweet-talked him into it, assuring him that there was no risk but lots of profit and presumably also teaching him how to get the title deeds out of his mother without her

asking questions. He must have believed that no harm would befall his widowed mother. The fact that the cheques issued by PT, drawn on a Kuala Lumpur bank, were all dishonoured, so soon after credit facilities were granted by the defendant, reinforces my belief that the son, in all his youthfulness, was probably taken in by unscrupulous associates or so-called friends.

For the reasons which I have given above I also find that Mdm Wee did not explain the mortgage deed sentence by sentence to the plaintiff in Hokkien. Mdm Wee could have explained generally the effect of the mortgage deed to the son in English and I think she did. But the son deceitfully did not correctly interpret it to the mother.

Accordingly, in my judgment, this is a case where the plea of non est factum applies. The plaintiff never intended to part with the title deeds for the purpose of mortgaging her property as security for the credit facilities to be granted by the defendant to PT. She did not intend to execute a legal mortgage on 8 October 1981. The plaintiff is therefore entitled to the reliefs she claims, with costs.

I think this case highlights once again the need for extra care on the part of solicitors in dealing with elderly and/or illiterate persons (or others under disability), particularly when such persons are assuming responsibilities or liabilities of others. It is vitally important to ensure that such a person fully understands what he is about to do and that there is no undue influence or deception. Only a disinterested person should be asked to be an interpreter. And where a solicitor is acting for all parties in a transaction he must be ever so conscious of a conflict situation arising and should not hesitate, wherever there is a reasonable doubt, to ask the person to seek independent legal advice.

Claim allowed.

Solicitors: *Yap & Yap; Joseph Hoo Morris & Kumar.*

Reported by *Teoh Ai Lin*

Hew Tze Yin & Anor v Ming Teck Co Pte Ltd

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 1149 OF 1989
KARTHIGESU JC
12 OCTOBER 1990

Land Law — Agreement for sale and purchase of flat — Notice to complete given by vendor after agreed date in sale and purchase agreement — Shortfall in area of flat — Protracted negotiation between parties — Sale and purchase of flat not completed — Whether vendor in breach by reason of failure to give valid notice to complete or shortfall in area of flat — Whether purchaser obliged to complete

The defendants were developers of a condominium of flats. The defendants entered into an agreement ('the agreement') to sell a flat ('the flat') to the plaintiffs some time in September 1981. Under cl 14(2) of the agreement notice of intention to complete was to be given by the vendor on or before 31 December 1986. By a notice in writing dated 7 August 1987 addressed to the plaintiffs' solicitors, the defendants' solicitors called on the plaintiffs to complete the purchase of the flat by paying the balance of the purchase price.

The plaintiffs' solicitors replied that (i) as the defendants' notice to complete was given after 31 December 1986, liquidated damages for late completion was payable; and (ii) a deduction in purchase price would be made for the 4.8% shortfall in the area of the flat. There followed an exchange of correspondence between the parties' solicitors. The plaintiffs did not complete.

In August 1989, the plaintiffs entered into an agreement to sell the flat to a third party and requested the defendants to execute a transfer in favour of the plaintiffs' sub-purchaser. The defendants' solicitors replied that the defendant had no objections to such tripartite transfer. Thereafter there was a further exchange of correspondence between the parties' solicitors regarding the shortfall in the area of the flat. On 25 November 1989, the defendants' solicitors wrote to the plaintiffs' solicitors stating that the defendants required completion and denying that the shortfall in area of the flat was actionable. Notwithstanding the defendants' solicitors' letter dated 25 November 1989, the defendants did not act under the terms of the agreement to repudiate the agreement nor did the plaintiffs act to rescind the agreement on account of the shortfall in area.

The plaintiffs commenced proceedings on 25 November 1989, claiming that the defendants were in breach of the agreement, on account of the shortfall in area and the late completion.

Held, dismissing the plaintiffs' claim:

(1) Under the agreement, the last date for notice to complete to be given was 31 December 1986. The irresistible inference on the facts is that no application had been made by the defendants to the Controller of Housing for an extension of time for completion. The defendants' solicitors had given a valid notice to complete by virtue of their letter dated 7 August 1987, and there was no requirement under the agreement that the notice to complete must contain a completion account nor was it a fundamental conveyancing practice that a purchaser be entitled to a completion account as of right. There was no doubt that the plaintiffs were entitled to liquidated damages under the agreement for the late completion.